

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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GREGORY B. MONACO, on behalf of  
himself and other similarly situated  
individuals. *et al.*

**MEMORANDUM & ORDER**

**98-CV-3386 (NGG) (RML)**

Plaintiffs,

-against-

MICHAEL HOGAN, Ph.D., in his official  
capacity as Commissioner of the New York  
State Office of Mental Health, *et al.*,

Defendants.

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NICHOLAS G. GARAUFIS, United States District Judge.

Plaintiffs Gregory Monaco (“Monaco”), the Mental Disability Law Clinic of Touro Law School (“Mental Disability Law Clinic”), and a state-wide class of individuals found to be incompetent to stand trial (collectively, “Plaintiffs”) bring this action asserting claims under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, the Cruel and Unusual Punishment Clause of the Eighth Amendment, 42 U.S.C. § 1983, and state law claims of negligence and false imprisonment. (See Fifth Amended Complaint (Docket Entry # 230).) Monaco filed the initial complaint in this action on May 5, 1998. (See Complaint (Docket Entry # 1).) Plaintiffs now move for leave to file a sixth amended complaint adding claims under the Americans with Disabilities Act (“ADA”) and five pendent state law claims seeking injunctions prohibiting state officials from violating state law. (See Mot. for Leave to File Sixth Am. Compl. (Docket Entry # 464).) On October 26, 2010, Magistrate Judge Robert M. Levy issued a Report and Recommendation (“R&R”) recommending that the court permit Plaintiffs to amend the complaint to include the ADA claims, but not the state law claims, which are barred by the Eleventh Amendment. (R&R (Docket Entry # 506) at 9); see also Pennhurst State Sch. & Hosp.

v. Halderman, 465 U.S. 89, 121 (1984) (“[A] claim that state officials violated state law in carrying out their official responsibilities is a claim against the State that is protected by the Eleventh Amendment. . . . [T]his principle applies as well to state-law claims brought into federal court under pendent jurisdiction.”) Judge Levy further recommended that “[P]laintiffs be precluded from further amending the complaint for the duration of the case.” (R&R at 9.)

No party has objected to Judge Levy’s R&R, and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). Having reviewed Judge Levy’s R&R, the court adopts it in its entirety. See, e.g., Brown v. Ebert, No. 05-CV-5579 (DLC), 2006 U.S. Dist LEXIS 94265, at \*6 (S.D.N.Y. Dec. 29, 2006) (where no party objects to a magistrate judge’s report and recommendation, review is for “clear error”). Plaintiffs may amend the complaint to include the ADA claims but not the additional state law claims. No further amendments to the pleadings will be granted absent good cause.

SO ORDERED.

s/Nicholas G. Garaufis

Dated: Brooklyn, New York  
December 10, 2010

NICHOLAS G. GARAUFIS  
United States District Judge